

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
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Michael HERMANN) Group Art Unit: 2872
	:
Application No.: 09/817,797) Examiner: Audrey Y. Chang
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Filed: March 27, 2001) Confirmation No. 8356
	:
For: DEVICE FOR QUANTITATIVE)
ASSESSMENT OF THE ALIGNED	:
POSITION OF TWO MACHINE)
PARTS, WORKPIECES OR THE LIKE	:

RESPONSE TO REPEATED NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:


On October 10, 2008, a Notification of Non-Compliant Appeal Brief was issued by the Examiner in which she held that:

The brief fails to provide the proper statement concerning the grounds of rejection. The final rejection of the application does not raise rejection *[sic]* under 35§ USC 112, second paragraph. The objection to the claims cannot be converted to rejection under 35 USC 112, second paragraph.

In response to said Notice, a Petition was filed on October 20, 2008, seeking both withdrawal of the Examiner's determination that the Brief is non-compliant and seeking modification of the Examiner's action changing the objection to a rejection on the grounds that the Examiner's objection to the claims is in contravention of established Office policy which is to "reject", not object, to claims that are "confusing and indefinite," with 35 USC § 112, second paragraph being used as the basis for doing so. That is, as set forth in MPEP § 2171: "If the claims do not particularly point out and distinctly claim that which applicants regard as their invention, the appropriate action by the examiner is to reject the claims under **35 U.S.C. 112**, second paragraph."

A decision on Appellant's Petition is still awaited. Therefore, it is requested that the holding of applicant's Appeal Brief as being non-compliant be withdrawn pending a decision on Appellant's Petition.

Respectfully submitted,

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